

# Saul Shoot - 'As a matter of fact...'

By [Saul Shoot](#)

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With reference to '[Is the ASA flouting the CPA?](#)' published on Bizcommunity on 22 May, 'Everyone is entitled to their own opinions, but they are not entitled to their own facts'[1]. The facts are as follows:



1. The ASA consented to a Court Order in the South Gauteng High Court pursuant to admissions the ASA made in its Affidavits that[2]:

1.1 **"The ASA does not assert jurisdiction over advertisers which are not its members";**

1.2 **"The ASA's enforcement of the Code therefore binds only its members and only because those members have agreed to be bound ... the ASA exercises a purely contractual power, which binds no party other than members of the ASA" ;**

1.3 **"The ASA's rulings do not have the force of law. They bind only members of the ASA.**

**The ASA does not assert jurisdiction over non-members";**

1.4 **"Non-members of the ASA ... are legally entitled to ignore the rulings and procedures of the ASA".**

2. It bears emphasis that these are the ASA's own words.

3. Kevin Charleston ("Charleston") was the losing party in the ASA appeal before the then President of the ASA Mervyn King.

4. Charleston's complaint which was dismissed on appeal was premised on the ASA's "False, misleading or deceptive representations" to the effect that it was authorised on behalf of the Medicines Control Council ("MCC") to administer and regulate medicine advertising and advice in respect of diseases on the MCC's behalf when this claim was to the knowledge of the ASA and Charleston untrue. Charleston initially pretended not to be associated with or supported by other activists including Section 27. Criminal charges were lodged against the ASA as a result of the ASA (under the Presidency of Mervyn King) having falsely claimed to be regulating medicine advertising "on behalf of the MCC" purportedly in terms of the ASA's then medicine code which the ASA falsely claimed had been "issued in terms of Section 18C of the Medicines Act 101 of 1965"[3] (see some of the ASA's false and deceptive claims in the attachments hereto) at a time when Mervyn King was "the Supreme Officer of the ASA"[4].

5. The day following Mr Charleston's groundless complaint (about Omega 3 Fish Oils) being finally dismissed by the ASA, the ASA resolved to change its Code but kept this secret from the public for quite some time.

6. This secretive conduct by the ASA gave rise to the **"deep concern"** expressed by Gail Schimmel ("Schimmel") who was the former Head of Legal and Regulatory Affairs at the ASA. Schimmel's article in which she expressed her deep concern about **"symptoms of an illness"** within the ASA was published on Bizcommunity - [Appendicitis at the ASA?](#).

7. Shortly after Mr Charleston's complaint was finally dismissed by the ASA and after "secretly" amending its Code, Mervyn King resigned as President of the ASA. His resignation also followed the criminal charges having been lodged against the ASA in relation to the false, misleading and deceptive representations made by the



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ASA under his presidency.

8. Charleston's purported legal opinion in regard to the CPA reveals his ignorance of the facts. As appears above, in the ASA's own words, the ASA asserts that its Code is a contract entered into with its members and it is accordingly rendering a service of regulation to its members. It also purports to offer "appeal" services to non-members against payment of so-called "appeal fees".

9. The ASA has pursuant to the aforesaid admissions (including the admissions that **The ASA's rulings do not have the force of law and Non-members of the ASA ... are legally entitled to ignore the rulings and procedures of the ASA**) discontinued pretending to have jurisdiction over any of my clients.

10. The "**opinions**" expressed *inter alia* by Charleston on this and other websites do not change the **facts**.

[Download Appendices](#)

## References:

[1] Daniel Patrick Moynihan.

[2] South Gauteng High Court, Johannesburg - Case No: 2012/18405.

[3] Appendix A.

[4] Article 11 of the ASA's Articles.

## ABOUT THE AUTHOR

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